

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

RONALD D. MYERS, on behalf of)
himself and all others similarly situated,)
Plaintiff,)
v.) Civil Action No. 5:18-cv-00967
AVIAGEN TURKEYS, INC.,)
Defendant.)

DEFENDANT'S NOTICE OF REMOVAL

Defendant, Aviagen Turkeys, Inc. (“Defendant”), by and through its undersigned counsel, and in accordance with the applicable Federal Rules of Civil Procedure, Local Rules of the United States District Court for Southern District of West Virginia, and Title 28 of the United States Code §§ 1332, 1441 and 1446, hereby files this Notice of Removal and removes the action entitled “Ronald D. Myers v. Aviagen Turkeys, Inc.,” Civil Action No. 18-C-30 in the Circuit Court of Greenbrier County, West Virginia, to the United States District Court of the Southern District of West Virginia. Removal of this action is based upon the following:

BACKGROUND

1. Plaintiff, Ronald D. Myers, instituted this action in the Circuit Court of Greenbrier County, West Virginia, by filing a Complaint on or about March 8, 2018. The Complaint alleges failure to pay wages in violation of the West Virginia Wage Payment and Collection Act (“WPCA”), W. Va. Code § 21-5-1, *et seq.* and the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S. Code § 216 (b), *et seq.*

2. Defendant was served with a copy of the Summons and Complaint on April 30, 2018 by Certified U.S. Mail. *See* Complaint attached hereto as Exhibit A.

3. No further proceedings have taken place in this action since the receipt of the Summons and Complaint by Defendant. Defendant has not answered the Complaint

REMOVAL IS PROPER BASED ON FEDERAL QUESTION JURISDICTION

4. This civil action is removed pursuant to 28 U.S.C. § 1441 because this Court has original jurisdiction on the basis of federal question under 28 U.S.C. §, and supplemental jurisdiction over remaining state law claims under 28 U.S.C. § 1367.

5. This Court has federal question jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 because Plaintiff asserts claims that arise under federal law. Specifically, Plaintiff alleges in paragraphs 2 and 20 of his Complaint, claims for an alleged violation of the Fair Labor Standards Act (“FLSA”), citing 29 U.S.C. § 216(b). Because Plaintiff seeks judicial enforcement of a federal statute (the FLSA), Plaintiff’s claims for relief arise under the laws of the United States and present a federal question.

6. This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367 because the state law claims arise out of a common nucleus of facts and form part of the same case or controversy. Specifically, Plaintiff alleges Defendant violated the West Virginia Wage Payment and Collection Act (“WPCA”), citing W. Va. Code § 21-5-1, *et seq.* All of these claims arise out of the same nucleus of operative facts related to the FLSA claim in Plaintiff’s Complaint.

VENUE

7. The United States District Court for the Southern District of West Virginia includes the county in which Plaintiff filed his Complaint. Thus, removal to this Court is proper pursuant to 28 U.S.C. § 1446(a).

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

8. This Notice of Removal has been filed within 30 days after service of Plaintiff's Complaint. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

9. Copies of all process, pleadings, orders and other papers or exhibits of every kind currently on file in the Circuit Court of Greenbrier County, West Virginia are attached to this Notice of Removal as Exhibit A, as required by 28 U.S.C. § 1446(a).

10. Upon filing this Notice of Removal, Defendant will provide a written notification to Plaintiff and will file a Notice of Filing of Notice of Removal with the clerk of the Circuit Court of Greenbrier County, West Virginia.

11. Defendant files this Notice without waiving any defenses to the claims asserted by Plaintiff, without conceding that Plaintiff has stated claims upon which relief can be granted, and without conceding that Plaintiff is entitled to any damages against Defendant in any amount whatsoever.

WHEREFORE, Aviagen Turkeys, Inc. respectfully requests that the United States District Court for the Southern District of West Virginia accept the removal of this action from the Circuit Court of Greenbrier County, West Virginia and direct that said Court have no further jurisdiction over this matter unless this case is remanded.

Respectfully submitted this 24th day of May, 2018.

By Counsel,

/s/ Chip E. Williams

Chip E. Williams, WV State Bar No. 8116

Jared C. Underwood, WV State Bar No. 12141

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

RONALD D. MYERS, on behalf of)
himself and all others similarly situated,)
)
Plaintiff,)
)
v.) Civil Action No. 5:18-cv-00967
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AVIAGEN TURKEYS, INC.,)
)
Defendant.)
)

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2018, I electronically filed the foregoing **DEFENDANT'S NOTICE OF REMOVAL** with the Clerk of the Court using the CM/ECF system. A copy of the **NOTICE OF REMOVAL** was also sent via U.S. Mail, first class, addressed as follows:

D. Adrian Hoosier, II, Esq.
LORD HOOSIER, PLLC
225 Hale Street
Charleston, WV 25301

/s/ Chip E. Williams

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